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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,307	02/06/2004	Laurent Bazinet	6013-145US	6477
20988	7590	10/04/2007		
OGILVY RENAULT LLP 1981 MCGILL COLLEGE AVENUE SUITE 1600 MONTREAL, QC H3A2Y3 CANADA			EXAMINER WEIER, ANTHONY J	
			ART UNIT 1794	PAPER NUMBER
			MAIL DATE 10/04/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/772,307

Applicant(s)

BAZINET ET AL.

Examiner

Anthony Weier

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 4, 5, 10, and 11 are rejected under 35 U.S.C. 102(e) as being anticipated by Baraldi.

Baraldi discloses a first extraction of a plant material (carob leaf or meal) wherein most of the EGC is removed into the extract wherein the plant material is then extracted a second time wherein a number of remaining catechins are removed including EGCG (see Table 1), said plant material extracted with hot water.

3. Claims 1, 2, 4, 5, 8, 10, and 11 are rejected under 35 U.S.C. 102(e) as being anticipated by Mishkin et al.

Mishkin et al discloses a first extraction of tea (e.g. fresh tea leaves; col. 3), wherein it is expected that due to the high temperature of the extraction solution (e.g. 110 C) and residence times employed in the instant invention (e.g. 10 minutes; col. 3; instant Specification; Example 1) most of the EGC is removed in said first extract. Mishkin et al further discloses a second extraction of the tea at a higher temperature

wherein it is expected due to the high temperature at least a residual amount of a second catechin (e.g. EGCG) is removed. Both extractions are conducted using water.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 6, 7, 8, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baraldi.

The claims further call for the temperatures employed during the first and second extracts. Although Baraldi discloses the extractions being conducted with hot water (paragraph 15), there is no specific recitation of the temperature employed. However, such determination would have been well within the purview of a skilled artisan, and, absent a showing of unexpected results, it would have been obvious to one having ordinary skill in the art at the time of the invention to have arrived at such temperature through routine experimentation by extracting with different hot water temperatures.

6. Claims 3, 6, and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mishkin et al.

The claims further call for the temperatures employed during the first and second extracts. Although Mishkin et al discloses the first extraction being conducted at a temperature less than 110 C, there is no specific recitation of the temperatures as called

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for in instant claims 6 and 7. However, such determination would have been well within the purview of a skilled artisan, and, absent a showing of unexpected results, it would have been obvious to one having ordinary skill in the art at the time of the invention to have arrived at such temperature through routine experimentation by extracting with different hot water temperatures.

Although Mishkin et al discloses the treatment of fresh tea as well as black tea, it is not clear whether or not the fresh tea is green tea. However, it is well known to prepare tea beverages from all sorts of teas including green tea, and it would have been further obvious to have employed a green tea as a matter of preference depending on, for example, the desired taste of the subsequently formed tea beverage.

***Prior Art***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Thursday.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Anthony Weier  
September 23, 1007

Anthony Weier  
Primary Examiner  
Art Unit 1761

  
9/23/07